

AMENDED IN ASSEMBLY APRIL 15, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 382

Introduced by Assembly Member Mullin

February 14, 2013

An act to amend Sections ~~6254.26, 54956.81, 54956.81~~ and 54957.5 of the Government Code, relating to state and local government.

LEGISLATIVE COUNSEL’S DIGEST

AB 382, as amended, Mullin. State and local government: alternative investments: public access.

Existing law, the California Public Records Act, requires state agencies and local agencies to make public records available for inspection, subject to specified criteria, and with specified exceptions. Existing law excludes from disclosure records of public investment funds regarding alternative investments, as defined, unless the information has already been publicly released by the keeper of the information. Existing law defines an alternative investment to mean an investment in a private equity fund, venture fund, hedge fund, or absolute return fund.

~~This bill would further exempt from disclosure records of public investment funds regarding nonpublicly traded direct real estate investments or nonpublicly traded indirect real estate investments, as defined. The bill would make conforming changes to related provisions.~~

Existing law, the Ralph M. Brown Act, requires the meetings of the legislative body of a local agency to be conducted openly and publicly, with specified exceptions. Existing law authorizes the legislative body of a local agency that invests pension funds to hold a meeting in closed

session to consider the purchase or sale of particular, specific pension fund investments.

This bill would further authorize the legislative body of a local agency that invests pension funds to hold a meeting in closed session to consider information related to alternative investments and alternative investment vehicles, as specified.

Existing constitutional provisions require that a statute that limits the right of access to the meetings of public bodies or the writings of public officials and agencies be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest.

This bill would make legislative findings to that effect.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 ~~SECTION 1. Section 6254.26 of the Government Code is~~
2 ~~amended to read:~~
3 ~~6254.26. (a) Notwithstanding any other provision of this~~
4 ~~chapter or other law, the following records regarding alternative~~
5 ~~investments in which public investment funds invest shall not be~~
6 ~~subject to disclosure pursuant to this chapter, unless the information~~
7 ~~has already been publicly released by the keeper of the information:~~
8 ~~(1) Due diligence materials that are proprietary to the public~~
9 ~~investment fund or the alternative investment vehicle.~~
10 ~~(2) Quarterly and annual financial statements of alternative~~
11 ~~investment vehicles.~~
12 ~~(3) Meeting materials of alternative investment vehicles.~~
13 ~~(4) Records containing information regarding the portfolio~~
14 ~~positions in which alternative investment vehicles invest.~~
15 ~~(5) Capital call and distribution notices.~~
16 ~~(6) Alternative investment agreements and all related documents.~~
17 ~~(b) Notwithstanding subdivision (a), the following information~~
18 ~~contained in records described in subdivision (a) regarding~~
19 ~~alternative investments in which public investment funds invest~~
20 ~~shall be subject to disclosure pursuant to this chapter and shall not~~
21 ~~be considered a trade secret exempt from disclosure:~~
22 ~~(1) The name, address, and vintage year of each alternative~~
23 ~~investment vehicle.~~

1 ~~(2) The dollar amount of the commitment made to each~~
2 ~~alternative investment vehicle by the public investment fund since~~
3 ~~inception.~~

4 ~~(3) The dollar amount of cash contributions made by the public~~
5 ~~investment fund to each alternative investment vehicle since~~
6 ~~inception.~~

7 ~~(4) The dollar amount, on a fiscal yearend basis, of cash~~
8 ~~distributions received by the public investment fund from each~~
9 ~~alternative investment vehicle.~~

10 ~~(5) The dollar amount, on a fiscal yearend basis, of cash~~
11 ~~distributions received by the public investment fund plus remaining~~
12 ~~value of partnership assets attributable to the public investment~~
13 ~~fund's investment in each alternative investment vehicle.~~

14 ~~(6) The net internal rate of return of each alternative investment~~
15 ~~vehicle since inception.~~

16 ~~(7) The investment multiple of each alternative investment~~
17 ~~vehicle since inception.~~

18 ~~(8) The dollar amount of the total management fees and costs~~
19 ~~paid on an annual fiscal yearend basis, by the public investment~~
20 ~~fund to each alternative investment vehicle.~~

21 ~~(9) The dollar amount of cash profit received by public~~
22 ~~investment funds from each alternative investment vehicle on a~~
23 ~~fiscal year-end basis.~~

24 ~~(e) For purposes of this section, the following definitions shall~~
25 ~~apply:~~

26 ~~(1) "Alternative investment" means an investment in a private~~
27 ~~equity fund, venture fund, hedge fund, or absolute return fund, or~~
28 ~~a nonpublicly traded direct real estate investment or nonpublicly~~
29 ~~traded indirect real estate investment.~~

30 ~~(2) "Alternative investment vehicle" means the limited~~
31 ~~partnership, limited liability company, or similar legal structure~~
32 ~~through which the public investment fund invests in portfolio~~
33 ~~companies or nonpublicly traded real estate.~~

34 ~~(3) "Nonpublicly traded direct real estate investment" means~~
35 ~~the direct ownership of private real estate investments in the name~~
36 ~~of a fund or special purpose entity, whether equity or debt,~~
37 ~~consisting of a 100 percent interest or partial interest in the~~
38 ~~investment position. These investments consist of separate account~~
39 ~~investments.~~

1 ~~(4) “Nonpublicly traded indirect real estate investment” means~~
2 ~~the indirect ownership of private real estate investments in the~~
3 ~~name of a fund or special purpose entity, whether equity or debt,~~
4 ~~consisting of a 100 percent interest or partial interest in the~~
5 ~~investment position. These investments are commonly interests in~~
6 ~~limited partnerships or limited liability corporations, similar to~~
7 ~~most private equity investments. These investments consist of~~
8 ~~commingled fund investments.~~

9 ~~(5) “Nonpublicly traded real estate” means a nonpublicly traded~~
10 ~~direct real estate investment or nonpublicly traded indirect real~~
11 ~~estate investment.~~

12 ~~(6) “Portfolio positions” means individual portfolio investments~~
13 ~~made by the alternative investment vehicles.~~

14 ~~(7) “Public investment fund” or “fund” means any public~~
15 ~~pension or retirement system, and any public endowment or~~
16 ~~foundation.~~

17 ~~SEC. 2.~~

18 ~~SECTION 1.~~ Section 54956.81 of the Government Code is
19 amended to read:

20 54956.81. Notwithstanding any other provision of this chapter,
21 a legislative body of a local agency that invests pension funds may
22 hold a closed session to consider the purchase or sale of particular,
23 specific pension fund investments or the information set forth in
24 subdivision (a) of Section 6254.26. All investment transaction
25 decisions made during the closed session shall be made by rollcall
26 vote entered into the minutes of the closed session as provided in
27 subdivision (a) of Section 54957.2.

28 ~~SEC. 3.~~

29 ~~SEC. 2.~~ Section 54957.5 of the Government Code is amended
30 to read:

31 54957.5. (a) Notwithstanding Section 6255 or any other
32 ~~provisions of law, agendas of public meetings and any other~~
33 ~~writings, when distributed to all, or a majority of all, of the~~
34 ~~members of a legislative body of a local agency by any person in~~
35 ~~connection with a matter subject to discussion or consideration at~~
36 ~~an open meeting of the body, are disclosable public records under~~
37 ~~the California Public Records Act (Chapter 3.5 (commencing with~~
38 ~~Section 6250) of Division 7 of Title 1), and shall be made available~~
39 ~~upon request without delay. However, this section shall not include~~

1 any writing exempt from public disclosure under Section 6253.5,
2 6254, 6254.3, 6254.7, 6254.15, 6254.16, 6254.22, or 6254.26.

3 (b) (1) If a writing that is a public record under subdivision (a),
4 and that relates to an agenda item for an open session of a regular
5 meeting of the legislative body of a local agency, is distributed
6 less than 72 hours prior to that meeting, the writing shall be made
7 available for public inspection pursuant to paragraph (2) at the
8 time the writing is distributed to all, or a majority of all, of the
9 members of the body.

10 (2) A local agency shall make any writing described in
11 paragraph (1) available for public inspection at a public office or
12 location that the agency shall designate for this purpose. Each local
13 agency shall list the address of this office or location on the agendas
14 for all meetings of the legislative body of that agency. The local
15 agency also may post the writing on the local agency's Internet
16 Web site in a position and manner that makes it clear that the
17 writing relates to an agenda item for an upcoming meeting.

18 (3) This subdivision shall become operative on July 1, 2008.

19 (c) Writings that are public records under subdivision (a) and
20 that are distributed during a public meeting shall be made available
21 for public inspection at the meeting if prepared by the local agency
22 or a member of its legislative body, or after the meeting if prepared
23 by some other person. These writings shall be made available in
24 appropriate alternative formats upon request by a person with a
25 disability, as required by Section 202 of the Americans with
26 Disabilities Act of 1990 (42 U.S.C. Sec. 12132), and the federal
27 rules and regulations adopted in implementation thereof.

28 (d) This chapter shall not be construed to prevent the legislative
29 body of a local agency from charging a fee or deposit for a copy
30 of a public record pursuant to Section 6253, except that a surcharge
31 shall not be imposed on persons with disabilities in violation of
32 Section 202 of the Americans with Disabilities Act of 1990 (42
33 U.S.C. Sec. 12132), and the federal rules and regulations adopted
34 in implementation thereof.

35 (e) This section shall not be construed to limit or delay the
36 public's right to inspect or obtain a copy of any record required to
37 be disclosed under the requirements of the California Public
38 Records Act (Chapter 3.5 (commencing with Section 6250) of
39 Division 7 of Title 1). This chapter shall not be construed to require

1 a legislative body of a local agency to place any paid advertisement
2 or any other paid notice in any publication.

3 ~~SEC. 4.~~

4 *SEC. 3.* The Legislature finds and declares that Sections 1, 2,
5 ~~and 3 and~~ 2 of this act, which amend Sections ~~6254.26, 54956.81,~~
6 ~~54956.81~~ and 54957.5 of the Government Code, impose a
7 limitation on the public's right of access to the meetings of public
8 bodies or the writings of public officials and agencies within the
9 meaning of Section 3 of Article I of the California Constitution.
10 Pursuant to that constitutional provision, the Legislature makes
11 the following findings to demonstrate the interest protected by this
12 limitation and the need for protecting that interest:

13 The public interest in nondisclosure pursuant to this act
14 outweighs the public interest in disclosure, since disclosure of the
15 information under the act puts public pension funds at a competitive
16 disadvantage in the marketplace, likely reducing a pension fund's
17 return on investment and thereby necessitating greater contribution
18 from the public for the support of public pensions.